

The House Committee on Public Utilities and Telecommunications offers the following substitute to SB 425:

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 9 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, the
2 "Georgia Computer Security Act of 2005," so as to enact "The Georgia Child, Family, and
3 School Communications Protection Act"; to provide a short title; to provide for definitions;
4 to prohibit the transmission of certain messages unless the first eight characters of the subject
5 line are "ADV:ADLT"; to provide for a penalty; to provide for civil actions; to create a joint
6 committee of the General Assembly to inquire into and review appropriate safeguards for the
7 transmission of restricted messages; to provide for the committee to submit a report of its
8 findings and recommendations; to change provisions for conformity purposes; to provide for
9 related matters; to provide for an effective date; to provide for automatic repeal under certain
10 circumstances; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 9 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, the "Georgia
14 Computer Security Act of 2005," is amended by designating the existing portion of such
15 article as Part 1 and by inserting at the end of such article the following:

16 "Part 2

17 16-9-170.

18 This part shall be known and may be cited as the 'The Georgia Child, Family, and School
19 Communications Protection Act.'

20 16-9-171.

21 As used in this part, the term:

(1) 'Contact point' means any electronic identification to which messages can be sent, including any of the following:

(A) An instant message identity;

(B) A wireless telephone, a personal digital assistant, a pager number, or any other similar wireless communication device;

(C) A facsimile number; or

(D) An electronic mail address.

(2) 'Person' means an individual, corporation, association, partnership, or any other legal entity.

(3) 'Restricted message' means any communication sent to a contact point that:

(A) Is harmful to minors, as such phrase is defined in paragraph (4) of subsection (a) of Code Section 16-12-100.1;

(B) Is of actual or simulated sexually explicit conduct, as such phrase is defined in paragraph (4) of subsection (a) of Code Section 16-12-100;

(C) Is obscene, as such term is defined in subsection (b) of Code Section 16-12-80;

(D) Has the primary purpose of advertising commercial gambling, within the meaning of Code Section 16-12-22, or the participation in gambling operations otherwise prohibited by law; or

(E) Has the primary purpose of advertising prostitution, pimping, pandering, and related offenses within the meaning of Code Sections 16-6-9, 16-6-10, 16-6-11, 16-6-12, and 16-6-14.

16-9-172.

No person shall initiate or assist the transmission of a restricted message from a computer located in Georgia or to a contact point that the sender knows is held by a Georgia resident, unless the first eight characters of the subject line are 'ADV:ADLT'. As used in this Code section, the term 'transmission' does not include the acts of an intermediary that transmits, routes, relays, or temporarily stores, through an automatic technical process, the electronic mail on behalf of another where the intermediary does not choose the recipient of the electronic mail.

16-9-173.

Any person who violates Code Section 16-9-172 shall be subject to a civil penalty in an amount not to exceed \$1,000.00. Upon a second or subsequent violation of this Code section, a person shall be guilty of a felony punishable by imprisonment of one to five years or a fine not to exceed \$200,000.00, or both. Each violation of this part shall constitute a

1 separate offense, except that all restricted messages sent from one contact point
2 simultaneously to multiple contact points shall be considered one offense for purposes of
3 the first offense in violation of Code Section 16-9-172.

4 16-9-174.

5 (a) A civil action based on a violation of this part may be brought:

6 (1) By an owner of the contact point who has received a message in violation of this part;

7 (2) By a person through whose facilities the message was transmitted in violation of this
8 part; or

9 (3) By the Attorney General against a person who has violated this part.

10 (b) In each action brought under this Code section, the prevailing party may be awarded
11 reasonable attorney's fees.

12 (c) A person bringing an action under this Code section may recover:

13 (1) Actual damages, including reasonable attorney's fees; or

14 (2) In lieu of actual damages, the lesser of \$5,000.00 per each message received by a
15 recipient or transmitted or \$250,000.00 for each day that the violation occurs.

16 16-9-175.

17 (a) There is created as a joint committee of the General Assembly the Georgia Child,
18 Family, and School Communications Protection Overview Committee to be composed of
19 five members of the House of Representatives appointed by the Speaker of the House, one
20 of whom shall be a member of the minority party; five members of the Senate appointed
21 by the Senate Committee on Assignments, one of whom shall be a member of the minority
22 party; the chairperson of the House Committee on Public Utilities and Telecommunications
23 or his or her designee; and the chairperson of the Senate Regulated Industries and Utilities
24 Committee or his or her designee. The members of the committee shall serve two-year
25 terms concurrent with their terms as members of the General Assembly. The Speaker of
26 the House of Representatives and the Senate Committee on Assignments shall each
27 designate a cochairperson from among the appointees of their respective houses. The
28 cochairpersons shall serve as such for terms of two years concurrent with their terms as
29 members of the General Assembly. Vacancies in an appointed member's position or in the
30 offices of cochairperson of the committee shall be filled for the unexpired term in the same
31 manner as the original appointment. The committee shall periodically inquire into and
32 review appropriate safeguards for the transmission of restricted messages, as defined in
33 Code Section 16-9-171.

(b) The Public Service Commission, the Attorney General, and all other agencies of state government, upon request by the committee, shall assist the committee in the discharge of its duties as set forth in this part. The committee may employ staff and may secure the services of consultants as appropriate and subject to available funding. Upon authorization by joint resolution of the General Assembly, the committee shall have the power while the General Assembly is in session or during the interim between sessions to request the attendance of witnesses and the production of documents in aid of its duties. In addition, when the General Assembly is not in session, the committee shall have the power to request the attendance of witnesses and the production of documents in aid of its duties, upon application of the cochairpersons of the committee, with the concurrence of the Speaker of the House and President Pro Tempore of the Senate.

(c) The committee shall, on or before the fifteenth day of December of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations.

(d) The committee is authorized to expend state funds available to the committee for the discharge of its duties. Said funds may be used for the purposes of compensating staff, paying for services of consultants, and paying all other necessary expenses incurred by the committee in performing its duties.

(e) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(f) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government.

(g) This Code section shall be repealed effective December 31, 2012."

SECTION 2.

Said article is further amended by striking in its entirety Code Section 16-9-150, relating to a short title, and inserting in lieu thereof the following:

"16-9-150.

This ~~article~~ part shall be known and may be cited as the 'Georgia Computer Security Act of 2005.'"

SECTION 3.

Said article is further amended by striking in its entirety Code Section 16-9-151, relating to definitions, and inserting in lieu thereof the following:

1 "16-9-151.

2 As used in this ~~chapter~~ part, the term:

3 (1) 'Advertisement' means a communication, the primary purpose of which is the
4 commercial promotion of a commercial product or service, including content on an
5 Internet website operated for a commercial purpose.

6 (2) 'Authorized user' with respect to a computer, means a person who owns or is
7 authorized by the owner or lessee to use the computer.

8 (3) 'Cause to be copied' means to distribute or transfer computer software or any
9 component thereof. Such term shall not include providing:

10 (A) Transmission, routing, provision of intermediate temporary storage, or caching of
11 software;

12 (B) A storage medium, such as a compact disk, website, or computer server, through
13 which the software was distributed by a third party; or

14 (C) An information location tool, such as a directory, index, reference, pointer, or
15 hypertext link, through which the user of the computer located the software.

16 (4) 'Computer software' means a sequence of instructions written in any programming
17 language that is executed on a computer. Such term shall not include a text or data file,
18 a web page, or a data component of a web page that is not executable independently of
19 the web page.

20 (5) 'Computer virus' means a computer program or other set of instructions that is
21 designed to degrade the performance of or disable a computer or computer network and
22 is designed to have the ability to replicate itself on other computers or computer networks
23 without the authorization of the owners of those computers or computer networks.

24 (6) 'Consumer' means an individual who resides in this state and who uses the computer
25 in question primarily for personal, family, or household purposes.

26 (7) 'Damage' means any significant impairment to the integrity or availability of data,
27 software, a system, or information.

28 (8) 'Execute,' when used with respect to computer software, means the performance of
29 the functions or the carrying out of the instructions of the computer software.

30 (9) 'Intentionally deceptive' means any of the following:

31 (A) By means of an intentionally and materially false or fraudulent statement;

32 (B) By means of a statement or description that intentionally omits or misrepresents
33 material information in order to deceive the consumer; or

34 (C) By means of an intentional and material failure to provide any notice to an
35 authorized user regarding the download or installation of software in order to deceive
36 the consumer.

(10) 'Internet' means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol or its subsequent extensions; that is able to support communications using the Transmission Control Protocol/Internet Protocol suite, its subsequent extensions, or other Internet Protocol compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, high level services layered on the communications and related infrastructure described in this paragraph.

(11) 'Person' means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(12) 'Personally identifiable information' means any of the following:

(A) A first name or first initial in combination with a last name;

(B) Credit or debit card numbers or other financial account numbers;

(C) A password or personal identification number required to access an identified financial account;

(D) A social security number; or

(E) Any of the following information in a form that personally identifies an authorized user:

(i) Account balances;

(ii) Overdraft history;

(iii) Payment history;

(iv) A history of websites visited;

(v) A home address;

(vi) A work address; or

(vii) A record of a purchase or purchases."

SECTION 4.

Said article is further amended by striking in its entirety subsection (b) of Code Section 16-9-152, relating to spyware, browsers, hijacks, and other software prohibited, and inserting in lieu thereof the following:

"(b) Nothing in this Code section shall apply to any monitoring of, or interaction with, a user's Internet or other network connection or service, or a protected computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, repair, network management, network maintenance, authorized updates of software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other

1 illegal activities in connection with a network, service, or computer software, including
2 scanning for and removing software proscribed under this ~~article~~ part."

3 SECTION 5.

4 Said article is further amended by striking in its entirety subsection (b) of Code Section
5 16-9-153, relating to e-mail virus distribution, denial of service attacks, and other conduct
6 prohibited, and inserting in lieu thereof the following:

7 "(b) Nothing in this Code section shall apply to any monitoring of, or interaction with, a
8 user's Internet or other network connection or service, or a protected computer, by a
9 telecommunications carrier, cable operator, computer hardware or software provider, or
10 provider of information service or interactive computer service for network or computer
11 security purposes, diagnostics, technical support, repair, network management, network
12 maintenance, authorized updates of software or system firmware, authorized remote system
13 management, or detection or prevention of the unauthorized use of or fraudulent or other
14 illegal activities in connection with a network, service, or computer software, including
15 scanning for and removing software proscribed under this ~~article~~ part."

16 SECTION 6.

17 Said article is further amended by striking in its entirety subsection (b) of Code Section
18 16-9-154, relating to inducement to install, copy, or execute software through
19 misrepresentation prohibited, and inserting in lieu thereof the following:

20 "(b) Nothing in this Code section shall apply to any monitoring of, or interaction with, a
21 user's Internet or other network connection or service, or a protected computer, by a
22 telecommunications carrier, cable operator, computer hardware or software provider, or
23 provider of information service or interactive computer service for network or computer
24 security purposes, diagnostics, technical support, repair, network management, network
25 maintenance, authorized updates of software or system firmware, authorized remote system
26 management, or detection or prevention of the unauthorized use of or fraudulent or other
27 illegal activities in connection with a network, service, or computer software, including
28 scanning for and removing software proscribed under this ~~article~~ part."

29 SECTION 7.

30 Said article is further amended by striking in its entirety Code Section 16-9-155, relating to
31 penalties, and inserting in lieu thereof the following:

1 "16-9-155.

2 (a) Any person who violates the provisions of paragraph (2) of Code Section 16-9-152,
3 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) (a)(1)(A), (a)(1)(B), or
4 (a)(1)(C) of Code Section 16-9-153, or paragraph (2) of subsection (a) of Code Section
5 16-9-153 shall be guilty of a felony and, upon conviction thereof, shall be sentenced to
6 imprisonment for not less than one nor more than ten years or a fine of not more than \$3
7 million, or both.

8 (b) The Attorney General may bring a civil action against any person violating this ~~article~~
9 part to enforce the penalties for the violation and may recover any or all of the following:

- 10 (1) A civil penalty of up to \$100.00 per violation of this ~~article~~ part, or up to \$100,000.00
11 for a pattern or practice of such violations;
12 (2) Costs and reasonable attorney's fees; and
13 (3) An order to enjoin the violation.

14 (c) In the case of a violation of subparagraph ~~(B)~~ of paragraph (1) of subsection (a)
15 (a)(1)(B) of Code Section 16-9-153 that causes a telecommunications carrier to incur costs
16 for the origination, transport, or termination of a call triggered using the modem of a
17 customer of such telecommunications carrier as a result of such violation, the
18 telecommunications carrier may bring a civil action against the violator to recover any or
19 all of the following:

- 20 (1) The charges such carrier is obligated to pay to another carrier or to an information
21 service provider as a result of the violation, including, but not limited to, charges for the
22 origination, transport, or termination of the call;
23 (2) Costs of handling customer inquiries or complaints with respect to amounts billed for
24 such calls;
25 (3) Costs and reasonable attorney's fees; and
26 (4) An order to enjoin the violation.

27 (d) An Internet service provider or software company that expends resources in good faith
28 assisting consumers or business entities harmed by a violation of this chapter, or a
29 trademark owner whose mark is used to deceive consumers or business entities in violation
30 of this chapter, may enforce the violation and may recover any or all of the following:

- 31 ~~(1)(A)~~ Statutory damages of not more than \$100.00 per violation of this ~~article~~ part, or
32 up to \$1 million for a pattern or practice of such violations;
33 (2) Costs and reasonable attorney's fees; and
34 (3) An order to enjoin the violation."

SECTION 8.

Said article is further amended by striking in its entirety Code Section 16-9-156, relating to exceptions, and inserting in lieu thereof the following:

"(a) For the purposes of this Code section, the term 'employer' includes a business entity's officers, directors, parent corporation, subsidiaries, affiliates, and other corporate entities under common ownership or control within a business enterprise. No employer may be held criminally or civilly liable under this ~~article~~ part as a result of any actions taken:

(1) With respect to computer equipment used by its employees, contractors, subcontractors, agents, leased employees, or other staff which the employer owns, leases, or otherwise makes available or allows to be connected to the employer's network or other computer facilities; or

(2) By employees, contractors, subcontractors, agents, leased employees, or other staff who misuse an employer's computer equipment for an illegal purpose without the employer's knowledge, consent, or approval.

(b) No person shall be held criminally or civilly liable under this ~~article~~ part when its protected computers have been used by unauthorized users to violate this ~~article~~ part or other laws without such person's knowledge, consent, or approval.

(c) A manufacturer or retailer of computer equipment shall not be liable under this Code section, criminally or civilly, to the extent that the manufacturer or retailer is providing third-party branded software that is installed on the computer equipment that the manufacturer or retailer is manufacturing or selling."

SECTION 9.

Said article is further amended by striking in its entirety Code Section 16-9-157, relating to legislative findings and preemption, and inserting in lieu thereof the following:

"16-9-157.

The General Assembly finds that this ~~article~~ part is a matter of state-wide concern. This ~~article~~ part supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by any county, municipality, consolidated government, or other local governmental agency regarding spyware and notices to consumers from computer software providers regarding information collection."

SECTION 10.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

- 1
- SECTION 11.**

- 2
- All laws and parts of laws in conflict with this Act are repealed.